

**SEC.\_\_\_\_. CIVIL AIR PATROL AMENDMENTS**

(a) IN GENERAL.-- Section 9441 of title 10, United States Code is amended to read as follows —

**“§ 9441. Status: support by Air Force; employment**

“(a) STATUS AND UTILIZATION. (1) The Civil Air Patrol is an organization chartered by Congress as a nonprofit corporation. The purpose of the Civil Air Patrol is set forth in section 40302 of title 36.

(2) The Civil Air Patrol is the volunteer civilian auxiliary of the Air Force. The Secretary of the Air Force may use the services of the Civil Air Patrol in fulfilling the non-combat programs and missions of the Department of the Air Force. The Secretary of the Air Force may, under regulations prescribed by him, regulate the activities of the Civil Air Patrol when acting as the volunteer civilian auxiliary of the Air Force.

(3) When the services of the Civil Air Patrol are used by any branch of the Federal government, the Civil Air Patrol will be employed as the volunteer civilian auxiliary of the Air Force.

(4) The Civil Air Patrol is not a federal agency or instrumentality for any purpose other than civil liability protection as provided in subsection (e) of this section.

“(b) SUPPORT FOR THE CIVIL AIR PATROL AS A NONPROFIT CORPORATION. To assist the Civil Air Patrol in the fulfillment of its purposes as set forth in section 40302 title 36-

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(1) The Civil Air Patrol may utilize assets including, but not limited to, aircraft, motor vehicles, computers, and communications equipment,

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provided by the Federal government or that were purchased with Federal appropriated funds, including reimbursement;

(A) to respond to requests from state or local governments for assistance in disaster response or other emergency or non-emergency missions or activities. Such use is authorized whether or not the state or local governments provide reimbursement for this assistance, or provide reimbursement at a rate less than private companies charge for equivalent services;

(B) to fulfill its purposes. Such use is subject to Federal laws and regulations governing use of Federally provided or purchased assets by nonprofit corporations; and,

(2 ) The Secretary of the Air Force may provide funds for the Civil Air Patrol for the cost of insurance for civil liability protection associated with programs and missions not conducted as an instrumentality of the United States as provided for in subsection (e).

“(c) SUPPORT FOR THE CIVIL AIR PATROL AS THE AUXILIARY OF THE AIR FORCE. The Secretary of the Air Force may furnish resources as he considers to be needed by the Civil Air Patrol under regulations prescribed by him with the approval of the Secretary of Defense to enable the Civil Air Patrol, as the auxiliary of the Air Force, to fulfill its role of supporting Air Force programs and missions. The Secretary of the Air Force may—

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(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)--

(A) major items of equipment, including, but not limited to, aircraft, motor vehicles, computers and communications equipment; and

(B) necessary related supplies and training aids; that are excess to the military departments; and

(2) permit the use , with or without charge, of services and facilities of the Air Force;

(3) furnish or provide funds for supplies, including but not limited to, fuel and lubricants and other items required for vehicle and aircraft operations;

(4) establish, maintain and supply liaison offices of the Air Force at the National, Regional, State, Territorial headquarters of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer, employee or contractor of the Department of the Air Force to any liaison office at the National, Regional, State, or Territorial headquarters of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer, employee or contractor of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training programs of the Civil Air Patrol;

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(7) authorize the payment of travel expenses and allowances in accordance with regulations prescribed by the Secretary of the Air Force at rates not to exceed those paid to government employees under subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while carrying out programs or missions specifically assigned by the Air Force;

(8) provide funds for the National headquarters of the Civil Air Patrol, including, but not limited to, funds for the payment of staff compensation and benefits, administrative expenses, travel, per diem and allowances, rent, utilities, other operational expenses, and other key staff at Regional, State, or Territorial headquarters as deemed necessary by the Secretary of the Air Force to fulfill Air Force requirements;

(9) authorize the payment of expenses of placing into serviceable condition, improving, and maintaining equipment (including aircraft, motor vehicles, computers and communications equipment) owned or leased by the Civil Air Patrol;

(10) provide funds to the Civil Air Patrol for costs incurred for the lease or purchase of such items of equipment as the Secretary considers needed by the Civil Air Patrol;

(11 ) support the Civil Air Patrol cadet program by furnishing articles of the Air Force uniform to cadets without cost and other such support that the Secretary of the Air Force determines is consistent with Air Force missions and objectives; and

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(12) provide support, including the use of appropriated funds, for the Civil Air Patrol aerospace education program to the extent the Secretary of the Air Force determines these activities further Air Force missions and objectives.

“(d) FEDERAL FUNDS APPROPRIATED FOR THE CIVIL AIR PATROL. Federal funds appropriated for Civil Air Patrol shall be available for the exclusive use of the Civil Air Patrol.

“(e). CIVIL LIABILITY. The Secretary may use the services of the Civil Air Patrol in fulfilling the noncombat missions of the Department of the Air Force and for purposes of determining the civil liability of the Civil Air Patrol (or any member thereof) with respect to any act or omission committed by the Civil Air Patrol (or any member thereof) in carrying out a mission assigned by the Secretary of the Air Force, the Civil Air Patrol shall be deemed to be an instrumentality of the United States.

“(f) USE OF RETIRED AIR FORCE PERSONNEL. (1) The Secretary of the Air Force may retain through the use of personal services contracts, as administrators and liaison officers, persons retired from service in the Air Force whose qualifications are approved under regulations prescribed by the Secretary and who request to enter such a contract.

(2) A person retained pursuant to paragraph (1) may receive the person’s retired pay and an additional amount for such employment that is not less than the difference between the person’s retired pay and the pay and allowances the person would be entitled to receive if ordered to active duty in the grade in which the person retired from service in the Air Force.

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1 (3) A person retained pursuant to paragraph (1) may not be considered to be on  
2 active duty or inactive-duty training for any purpose. Such persons may however  
3 accept services on behalf of the Air Force and commit government funds as  
4 required to perform their liaison officer functions.

5 “(g) USE OF CIVIL AIR PATROL CHAPLAINS. The Secretary of the Air Force may use  
6 the services of Civil Air Patrol chaplains in support of the Air Force active duty and  
7 reserve component forces to the extent and under conditions deemed appropriate.

8 “(h) BOARD OF GOVERNORS. (1) The governing body of the Civil Air Patrol shall  
9 be a Board of Governors composed of:

10 (A) four members appointed by the Secretary of the Air Force who may  
11 be active or retired officers of the Air Force (including the Air Force  
12 Reserve and Air National Guard), Federal civilian employees, or private  
13 citizens;

14 (B) four members of the Civil Air Patrol as determined by the Civil Air  
15 Patrol;

16 (C) three members from federal agencies, public corporations, non-profit  
17 associations or other organizations having an interest and expertise in civil  
18 aviation and the Civil Air Patrol mission who are appointed jointly by the  
19 Secretary of the Air Force and the Civil Air Patrol National Commander,  
20 or, if there is a failure of this appointment for more than three months then  
21 the members will be chosen by majority vote of the members of the Board  
22 of Governors; and

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(D) One member appointed by the President of the Senate and one member appointed by the Speaker of the House of Representatives.

(2) The Chairperson of the Board of Governors shall be chosen by the members of the Board of Governors and shall alternate, every two years, between the members of the Board appointed by the Secretary of the Air Force and the members of the Board representing the Civil Air Patrol.

(3) The Board of Governors established in this subsection shall exercise the power granted to the Civil Air Patrol in section 40304 of Title 36. Adoption and amendments to the constitution and bylaws are subject to ratification by the corporate officers of the Civil Air Patrol as those officers are defined in the Civil Air Patrol's constitution and bylaws. However, neither the Board of Governors nor any other entity of the Civil Air Patrol shall have the power to amend or eliminate any of the requirements established in this section for the Board of Governors, such authority being reserved to the Congress.

(4 ) (A) The corporation shall eliminate or limit the personal liability of a member of the Board of Governors to the corporation or to its members for monetary damages or breach of fiduciary duty as said member of the Board of Governors; except that any such provision shall not eliminate or limit the liability of said member of the Board of Governors to the corporation or to its members for monetary damages for any breach of the member of the Board of Governors' duty of loyalty to the corporation or to its members, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law , or any

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1 transaction from which the member of the Board of Governors directly or  
2 indirectly derived an improper personal benefit. This clause shall not be  
3 construed to mean that members of the Board of Governors who are active duty  
4 or retired officers of the Air Force or Federal civilian employees are relieved of  
5 their duties under sections 207 and 208 of title 18.

6 (B) No member of the Board of Governors or officer shall be personally liable for  
7 any injury to person or property arising out of a tort committed by an employee  
8 or volunteer unless such member of the Board of Governors or officer was  
9 personally involved in the situation giving rise to the litigation or unless such  
10 member of the Board of Governors or officer committed a criminal offense in  
11 connection with such situation. The protection afforded in this clause shall not  
12 restrict other common law protections and rights that a member of the Board of  
13 Governors or officer may have. This clause shall not restrict the corporation's  
14 right to eliminate or limit the personal liability of a member of the Board of  
15 Governors to the corporation or to its members for monetary damages for breach  
16 of fiduciary duty as a member of the Board of Governors as provided in clause  
17 (A) of this paragraph."

18 (b) EFFECTIVE DATE:-- The amendment made by this section shall take effect on  
19 enactment of this Act.

### SECTION ANALYSIS

Section 9441 of title 10, United States Code designates the Civil Air Patrol (CAP)  
as the civilian auxiliary of the Air Force and specifies the support the Air Force can  
provided the CAP. The section also addresses how the Air Force can employ the CAP

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and specifies that when employed by the Air Force, CAP is considered an instrumentality of the United States for civil liability purposes. Section 9441 was originally enacted in 1948 and was last revised in 1994. When first enacted, the CAP's mission was almost exclusively SAR performed by volunteer members using their own aircraft. Air Force support was primarily in the form of providing excess equipment to CAP and providing fuel and operating expenses for the SAR missions. Over the years, the missions performed by CAP have expanded. For example, national missions now include counterdrug (CD) flying in support of DEA and the US Customs Service and at four times the effort expended in SAR. On the state and local level, CAP has memorandums of understanding (MOUs) with virtually every state emergency management agency. The MOUs outline assistance in areas ranging from natural disaster recovery operations to radiological monitoring of nuclear accidents to environmental surveys. Consequently, the type and amount of in-kind support provided by the Air Force has increased, along with significant increases in funding, and most of CAP's equipment is now purchased with appropriated funds. While section 9441 has been amended in the past to reflect some of these changes, it needs further revision to better define the relationship between the Air Force and CAP both in its capacity as an Air Force Auxiliary and in its capacity as a non-profit corporation chartered under Chapter 403 of title 36 United States Code. This revision authorizes appropriated fund support for some of the "non-operational" portions of CAP's functions conducted in its non-profit corporate status, the cadet and aerospace education programs being examples. Recent audits have questioned the authority for such expenditures and this amendment is intended to resolve any question as to the authority for these expenses.

Section 9441 (a) of the proposal recognizes CAP's non-profit corporate status under title 36 as well as its status as the Air Force Auxiliary under title 10. It specifies that the Secretary of the Air Force may use CAP in fulfilling any non-combat program or mission of the Department of the Air Force. The Secretary is also given the authority to regulate the activities of the CAP when it is acting in its capacity as the Air Force auxiliary. The provision also specifies that when CAP provides services to any branch of the Federal government, it is acting in its capacity as the civilian auxiliary of the Air Force. This is in line with current practice as these services are now provided under Air Force approved MOUs between the sponsored Federal agency and CAP. These MOUs are therefore the controlling mechanism for conferring Air Force non-combat mission status on specific mission categories. Finally it is called out that CAP, notwithstanding its close association with the Air Force as its auxiliary, is not a Federal agency or instrumentality for any purpose except for civil liability protection when engaged in Air Force-assigned missions pursuant to subsection (e). This makes it clear that CAP is not subject to the requirements of the *Administrative Procedures Act*, the *Freedom of Information Act* or any other law specifying how Federal agencies conduct their affairs while at the same time recognizing that CAP and its members are entitled to Federal instrumentality status when on Air Force-assigned missions but only for purposes of civil liability protection.

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Section 9441(b) specifies the support the Air Force is authorized to provide to CAP for its activities conducted in its capacity as a private non-profit corporation that are not related to their status as the civilian auxiliary of the Air Force.

Section 9441(b)(1)(A) provides that CAP may use its aircraft, vehicles and other assets that are provided by the Air Force or purchased with federal funds to engage in activities in support of state or local governments in emergency or non-emergency situations. Further, CAP will not be required to obtain reimbursement for these activities from the state or local government. This is consistent with longstanding practices conducted under Air Force approved MOUs between the every state emergency management agency as well as numerous local agencies and CAP.

Section 9441(b)(1)(B) applies to CAP's use of its federally funded equipment for purposes associated with its non-profit corporate status and not related to its Air Force auxiliary status. Such use is authorized but only subject to the requirements of the *Federal Grants and Cooperative Agreements Act* and implementing regulations.

Under 9441(b)(2), The Secretary may reimburse the CAP for the cost of obtaining commercial insurance coverage for their activities that are not Air Force assigned missions (generally via the MOU process mentioned previously) and thus do not qualify for civil liability protection as a Federal instrumentality under section 9441(e).

Section 9441(c) addresses the support the Air Force is authorized to provide to CAP in its capacity as the Auxiliary of the Air Force. The support is intended to allow CAP to fulfill its Air Force assigned programs and missions in its Air Force auxiliary capacity. The authority to provide any of the support specified is at the discretion of the Secretary of the Air Force. The Secretary has the power to not provide any of the specified support when he determines it is not in the best interest of the Air Force to do so.

Section 9441(c)(1) retains the existing authority to provide excess equipment and supplies to CAP via Defense Reutilization and Marketing Office (DRMO) but specifically adds computers to the type of excess equipment that can be provided. While access to DRMO was originally intended as CAP's primary means of acquiring aircraft and vehicles, it is now mostly used for lesser items of equipment such as field gear and uniform items.

Section 9441(c)(2) allows the CAP to use Air Force facilities and services without charge at the discretion of the Secretary. The determination on whether to charge for the facilities or services will be made using criteria similar to that used in deciding whether Air Force nonappropriated fund activities and private organizations have to pay for similar facilities or services.

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Section 9441(c)(3) allows the Air Force to furnish supplies in-kind or provide funds to CAP for the purchase of supplies necessary to conduct Air force assigned programs or missions. This would include supplies for CAP vehicle and aircraft operations as well as miscellaneous items associated with and necessary to conducting Air Force assigned programs or missions. Previously this authority was limited to providing only in-kind support of operating supplies. This is in line with longstanding Congressional funding for this sort of support to CAP.

Section 9441(c)(4) has eliminated the current restriction limiting the establishment and maintenance of Air Force liaison offices to no more than eight regional CAP headquarters. This provides flexibility in the event new regional offices are established.

Sections 9441(c) (5) and (6) are modified to reflect that personnel retained by the Air Force through personal services contracts may be utilized as liaison officers or to assist in CAP training programs. This is consistent with a December 1998 joint Air Force /CAP report to Congress which endorsed the concept of returning these individuals to Air Force control. They are currently employees of the CAP Corporation yet represent Air Force interests, which places them in a position with an inherent conflict of loyalties.

Section 9441(c)(7) will eliminate the current restriction on paying the travel costs of CAP personnel to times of war or national emergency. Under this section, CAP personnel who are conducting Air Force assigned activities or missions requiring travel away from their home station would be eligible for travel allowances that a government employee is entitled to. This is consistent with longstanding appropriations language allowing these payments for CAP CD missions and follows a recommendation in a recent DoD/IG audit report.

Section 9441(c)(8) retains the existing authority to provide funds to CAP for the expenses of its national headquarters and expands the authority to include the expenses for hiring limited key staff at regional, state or territorial headquarters as deemed necessary by the Secretary of the Air Force. These employees would be essentially those required to enable CAP to perform Air Force assigned programs or missions at the expected level of professionalism. This authority for hiring full-time paid employees in these key positions follows a recommendation contained in the recent DoD/IG audit report.

Section 9441(c)(9) modifies the current authority to pay expenses relating to improving equipment to include maintaining such equipment and to make clear that the authority is not limited solely to major equipment such as aircraft. It would also apply to computers and to any equipment owned or leased by CAP. As modified, this section includes the authority currently included in section 9441(b)(9) and that paragraph has been deleted.

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Section 9441(c)(10) authorizes the reimbursement by the Air Force for equipment leased by the CAP as well as equipment that is purchased, subject to a determination by the Secretary that the equipment is needed by CAP. This is consistent with recommendations from several recent reviews of Air Force funding of CAP operations and the transitory nature, nationwide scope and large variance in effort of some CAP operations.

Section 9441(c)(11) includes for the first time the CAP cadet program as a CAP activity that is eligible for Air Force funding support when the Secretary determines such support is consistent with Air Force missions and objectives. Similarly, section 9441(c)(12) authorizes appropriated fund support for the CAP aerospace education program to the extent the Secretary of the Air Force determines these activities further Air Force missions and objectives. This is an extension of the in-kind support these programs have been receiving. For example, CAP has been participating in the International Air Cadet Exchange since 1949 with the Air Force providing the overseas airlift that makes the program possible. Moreover, the Air Force has been providing nationwide airlift to teachers wishing to attend CAP's National Congress on Aviation and Space Education for many years.

Section 9441(d) states that any funds appropriated by Congress for the exclusive use of the CAP are available only for that purpose and may not be used for support of Air Force personnel assigned in support of CAP (CAP-USAF). Similar language has been included in recent appropriation acts. This does not modify the requirement that CAP must use the funds in a manner consistent with the laws and regulations pertaining to the use of federal funds provided to private non-profit organizations. Any funds appropriated for CAP but not used during the fiscal year would be returned to the general treasury.

Section 9441(e) retains the existing wording in current section 9441(c) that gives the CAP and its members federal instrumentality status when carrying out any missions assigned by the Secretary of the Air Force.

Section 9441(f) has the effect of changing the CAP liaison officers from CAP employees whose salary is reimbursed by the Air Force to personnel retained by the Air Force under a personal services contract. This avoids the current situation where the liaison officers are paid by CAP but are for all intents and purposes work at the direction of and serve the interests of the Air Force. The provision also specifies that these contract personnel can accept services on behalf of the government and commit government funds when required to perform their liaison officer function.

Section 9441(g) allows the Secretary to use CAP Chaplains in support of Air Force active and reserve personnel if he deems it appropriate. This is consistent with a

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Broad Area Review of CAP conducted in 1995. There are more CAP chaplains than active duty Air Force chaplains and this program has proved to be a benefit to both the Air Force and CAP in the instances where it has been tried in the past.

Section 9441(h) creates a new governing body for the CAP called the Board of Governors. This board will be composed of 13 members. The Secretary of the Air Force appoints 4 members and CAP appoints 4 members. The CAP National Commander and the Secretary of the Air Force will jointly appoint 3 members from nominated representatives of federal agencies or private organizations interested in civil aviation. Finally, the President of the Senate and the Speaker of the House will each appoint one member. In the event there is a failure to appoint the 3 members to be appointed jointly by the Secretary and the National Commander, the other members of the Governing Board will appoint the members by majority vote.

Paragraph (3) of this section provides that the Board of Governors shall exercise all the corporate powers granted to CAP in section 40304 of title 36 including the power to adopt and amend a constitution, bylaws and regulations. However, the corporate officers of the CAP must ratify any adoption or amendment of the CAP constitution and bylaws. Under current CAP bylaws, the corporate officers are the 67 members of the National Board representing the wing commanders from each of the states, the regional commanders, and certain national officers. For purposes of the ratification requirement, the corporate officers are considered to represent the CAP volunteer membership. Their role is analogous to approval of bylaw amendments by the shareholders of a for-profit corporation.

The new Governing Board is intended to improve and streamline the governing structure of CAP. The current CAP National Board is too large (67 members) and therefore unable to conduct business efficiently. It does not have adequate Air Force representation (currently one non-voting individual) and is therefore unbalanced as the governing body of the Air Force Auxiliary. Moreover, it does not adequately represent the typical CAP volunteer or appropriate outside interest groups and therefore is not as responsive as it should be.

Paragraph (4) provides for protection or limitation of liability for members of the Board of Governors from claims based on breach of fiduciary duty as a member of the Board of Governors. Protection is also provided from tort claims arising from the actions of a CAP employee or volunteer unless the member of the Board of Governors was personally involved.